

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 THE AUTHORS GUILD, et al.,

5 Plaintiffs,

6 v. 05 Civ. 8136 (DC)

7 GOOGLE, INC.,

Conference

8 Defendant.  
-----x

9 New York, N.Y.

10 July 19, 2011

11 10:00 a.m.

12 Before:

13 HON. DENNY CHIN

14 District Judge

15 APPEARANCES

16 BONI & ZACK LLC  
17 Attorneys for Plaintiffs  
BY: MICHAEL J. BONI

18 DEBEVOISE & PLIMPTON LLC  
19 Attorneys for Plaintiffs  
BY: BRUCE P. KELLER  
20 JEFFREY P. CUNARD

21 DURIE TANGRI LEMLEY ROBERTS & KENT LLP  
22 Attorneys for Defendant  
BY: DARALYN DURIE  
23 JOSEPH C. GRATZ

24 HILARY E. WARE  
25 In-house counsel for Defendant

1 (Case called)

2 THE COURT: Good morning. You can be seated. Who  
3 wants to give me a report?

4 MR. BONI: Your Honor, Michael Boni. I'm happy to.  
5 Since we were last here, the parties have been working  
6 diligently. We have had regular telephone calls. A number of  
7 certain parties within the three groups have had in-person  
8 meetings. As recently as Monday we had a very high level  
9 meeting among principals.

10 We are not there yet, your Honor. As your Honor  
11 pointed OUT at the last status conference, there are very  
12 complicated, complex issues that require us to delve in. It's  
13 the dog days of summer. We are doing our best. It's difficult  
14 to get everybody's schedules on track.

15 What we would ask your Honor is for some more time, we  
16 would hope through the mid to third week in September, to be  
17 able to let your Honor know whether we have a settlement or are  
18 on the way to a settlement or a litigation track.

19 THE COURT: You're not there yet. What is the  
20 prognosis? Let's back up a moment. I'm a little bit  
21 concerned. This is a six-year-old case. As I recall, there  
22 has been no discovery done, right, nothing to speak of?

23 MR. BONI: There has been documentary discovery.  
24 Unfortunately, it is now five years old and would have to be  
25 supplemented. But there has been substantial documentary

1 discovery, your Honor.

2 THE COURT: It seems to me one thought is to put you  
3 on a schedule, give you a deadline, allow a little room for  
4 continued discussions, but have a deadline. I think a deadline  
5 always makes the parties negotiate more efficiently, with a  
6 view toward teeing up cross-motions for summary judgment. It  
7 seems to me if we are on the litigation track, it's cross-  
8 motions for summary judgment on whether the use of snippets is  
9 fair use. I actually think that would not be that complicated.  
10 That's my current thinking.

11 MR. BONI: Yes, your Honor. We understand that.  
12 We're toward the end of July. Whatever we do, it is very  
13 difficult for the parties, through August, to get together. We  
14 are trying.

15 THE COURT: I don't doubt that. It's just a matter of  
16 I have a sense you would come back in mid to late September and  
17 you would probably want more time. Typically, what I would do  
18 is give a discovery cutoff and let you come back at the end of  
19 discovery and tell me where you are. Then in the meantime  
20 continue to talk.

21 MR. BONI: I think that doing that, your Honor,  
22 beginning in August on that dual track will be very distracting  
23 for the parties. The plaintiffs would have to focus heavily on  
24 what is essentially highly fact-specific discovery. I don't  
25 believe, your Honor, that it is as simple as cross-motions for

1 summary judgment. The factor analysis for fair use is  
2 fact-specific. We would have to update the now five-year-old  
3 discovery. We have not taken deposition discovery.

4 Let me propose one thing, your Honor.

5 THE COURT: I guess what you are not telling me is  
6 whether you think it is likely --

7 MR. BONI: Yes.

8 THE COURT: It's been a long time. At one point  
9 Google said, we will never agree to an opt-in settlement. If  
10 that's the case, I don't know that we are ever going to get  
11 there. I want to be more productive and efficient about it.

12 MR. BONI: I'm not standing up here telling you that  
13 we just want to buy time but that in the middle of September we  
14 are going to be right back here and then ask for a litigation  
15 schedule. I can't give a prognostication. I don't know that  
16 before your Honor Google has said it will never agree to an  
17 opt-in settlement. That's the precise settlement that we have  
18 been aiming for, understanding well your Honor's opinion. We  
19 know that that is the confines in which we are trying to settle  
20 this case, within an opt-in structure. Google understands that  
21 full well and has understood it from the time it's read your  
22 opinion.

23 THE COURT: Does anyone else want to add anything?  
24 Let's do this. Come back September 15th at 11 a.m. for a  
25 status conference. If the matter is not resolved or close to

1 resolved in principle, I'm going to give you a relatively tight  
2 schedule for discovery. In other words, not as if we are  
3 starting from scratch but keeping in mind that it is a  
4 six-year-old case. September 15th at 11 o'clock.

5 Anything else today?

6 MR. BONI: Thank you, your Honor.

7 THE COURT: I would ordinarily offer my services, but  
8 given the nature of the case and the fact that there are so  
9 many nonparties, I'm worried about injecting myself into  
10 settlement discussions. Would the parties be interested in  
11 some help from -- I don't remember who our magistrate judge  
12 is -- from the magistrate judge or from someone else, a senior  
13 judge? Do you think that might help?

14 MR. BONI: Your Honor, speaking for the authors, we  
15 would welcome that. We do need to discuss that with the other  
16 parties, but we think that would be a great idea.

17 MS. DURIE: Your Honor, Daralyn Durie. I think it  
18 makes sense for us to discuss this. As the Court is well  
19 aware, there are a lot of business issues in addition to legal  
20 issues that we are trying to work through. I think at this  
21 point it's not a problem with communication, it's just a  
22 problem of trying to figure out a structure that is going to  
23 make sense for all the parties.

24 THE COURT: It's not your typical settlement where a  
25 judge can just knock heads.

1 MS. DURIE: Right.

2 THE COURT: Think about it. If you want some  
3 assistance from us, let us know, and I can try to arrange  
4 something.

5 MS. DURIE: We appreciate the offer.

6 MR. BONI: Thank you, your Honor.

7 THE COURT: Thank you.

8 (Adjourned)

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